

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

U.S. DISTRICT COURT
DISTRICT OF WYOMING

2012 OCT 26 AM 10 12

STEPHAN HARRIS, CLERK
CASPER

UNITED STATES OF AMERICA
Plaintiff,

Rebuttal to Affidavit of KENT C.
SMITH filed 09/25/12

v.

Marvin Iverson, DOES 1 through 10,
inclusive

Case No. 1:2mj-175-j

Defendant in Error.

REBUTTAL TO AFFIDAVIT OF KENT C. SMITH filed 09/25/12

COMES NOW Marvin Leslie Iverson, a living, breathing, natural born, free man on the soil, one of the People of these united States, *sui juris*, defendant in error, by special appearance, with and claiming all of his unlimited, inherent, unalienable, God given Rights protected and secured by and through the national Federal Constitution and the Constitution of the State of Wyoming, and with his name lawfully and properly spelled only in upper and lower case letters, hereby respectfully makes this Rebuttal to the affidavit of KENT C. SMITH, based in truth, fact and law.

PURPOSE OF AN AFFIDAVIT

An affidavit is a statement of fact or direct first-hand experience or personal knowledge. Black's Law Dictionary Fifth addition defines a closed account as "*An account to which no further additions can be made on either side, but which remains still open for adjustment and set-off, which distinguishes it from an account stated.*" The affidavit of KENT C. SMITH includes only

unsubstantiated hyperbolas allegations and includes no bona fide fact or first-hand knowledge of any item in this case, nor is it first-hand experience. As such it only includes items about this case which are mere hearsay from others, none of which is admissible as fact or point of law. Since alleged complaint states this case is based upon spurious facts alleged in the dubious affidavit this case should be *sua sponte* and set aside and rendered *null and void ab initio* as there are no true substantive lawful facts in this alleged affidavit that are true and valid that stand as true and valid that stand as admissible in court as all the statements in the affidavit about the case are all hearsay and hypothecated insinuations. Lawful purpose of this rebuttal is to state that there are no facts that have been presented to the court in the affidavit of KENT C. SMITH which are in accordance with law that would in any way show any probable cause in this case.

LAWFUL STANDING OF “INSTRUMENTS” PROVIDED IN LAW

U.C.C. Article 3 section 311(b) states: “*the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.*” Also an instrument is lawfully applied to a debt or claim and discharged and set-off according to U.C.C. Article 3 section 311(d) as follows: “*A claim is discharged, [set-off], if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.*” UCC 3-603(b) states “*If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender,*

of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.” Black’s Law Dictionary Fifth addition defines a closed account as “*An account to which no further additions can be made on either side, but which remains still open for adjustment and set-off, which distinguishes it from an account stated.*”

REBUTTAL TO EACH ALLEGATION IN AFFIDAVIT BY KENT C. SMITH

filed 09/25/12

(a) Alleged complainant has failed to provide discovery of elemental testamentary evidence: badge number, oath of office, bond information, or F.A.R.A. form; has yet to be tendered by KENT C. SMITH, there is no lawful evidence to inform the court or the Defendant in error of his position as Special Agent of the Federal Bureau of Investigation to which KENT C. SMITH has claimed in his affidavit. Iverson, Defendant in error, requested the required oath of office from KENT C. SMITH and Defendant in error’s request was unlawfully summarily denied and was inaccurately told that no oath of office is needed. The public officers *** (Add citation of oath of office agency requirements)*** None of the alleged facts stated in his affidavit about this case are in the first hand material fact witness personal knowledge or experience of KENT C. SMITH and anything suggested to him by other agency personnel or bank employees is mere hearsay unsupported by fact or law and therefore is not sufficiently admissible and is inadmissible as fact or evidence in an affidavit or court of law.

(b) KENT C. SMITH cannot lawfully employ unsubstantiated hearsay to testify to mere legal theories related to him by the Sheriff about events with Big Horn County or with Big Horn Federal Savings Bank or to the alleged receipt of financial instruments by the bank. KENT C.

SMITH is devoid of any personal knowledge, experience to any alleged or potential fraud. By what law can KENT C. SMITH testify to items being related to him by others given KENT C. SMITH has no personal first-hand material fact knowledge or experience to any potential fraud?

(c) If KENT C. SMITH has no first-hand knowledge about personal items to which he testified to, is it not deemed hearsay? This Defendant in error vehemently objects to KENT C. SMITH's statements and demands that they be stricken from the record. KENT C. SMITH must prove by discovery where he has obtained knowledge of banking practices and regulations. He has no first-hand knowledge or experience concerning theories to which he is testifying then it is deemed mere unsubstantiated hearsay and this Defendant in error objects to the statements in their entirety and demands that they be removed from the record to correct the error in this case. KENT C. SMITH has no personal knowledge, experience or injury by any purported financial instruments of the bank. Defendant in error strenuously objects to the Electronic Funds Transfer Act instruments being inaccurately mislabeled improperly as "checks". The processing of EFT instruments is explicitly defined in C.F.R. 12-205.3(b)(2)(ii) as *The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an EFT, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction.* Each one is labeled specifically in writing "EFT ONLY" and "NOT FOR DEPOSIT" and therefore KENT C. SMITH has not cited any facts that prove his knowledge of banking law

allowing him to redefine EFT instruments as "checks". They are not "checks", as he claimed but they are one way electronic wire transfer instruments and are handled in an explicitly different manner than "checks". Defendant in error did not write "checks" as inaccurately described by KENT C. SMITH nor did Defendant tender "checks" to the bank. KENT C. SMITH may not have accurately interpreted the nature of EFT instruments at any time or at the time they were allegedly received by the bank and therefore cannot testify as to the specific bank accounts they were allegedly submitted to or *set-off* against. KENT C. SMITH has proved no personal first-hand knowledge of why the EFT instruments would be offered to set-off alleged debts by Defendant in error. ***KENT C. SMITH has no direct personal knowledge or experience of any EFT instruments being received by the bank. KENT C. SMITH has no personal knowledge or experience of anything scripted on the alleged EFT instruments or the amounts or item numbers because he did not see the originals of said alleged items and cannot verify or attest to the alleged items in their original condition as they were allegedly received by the bank. KENT C. SMITH is not privy to personal knowledge or experience of any alleged payoff amounts of any alleged mortgage held or any purported property owned by Iverson. KENT C. SMITH has no personal first-hand knowledge or experience of any alleged payoffs of any alleged vehicle loan or any vehicle allegedly owned by Iverson. KENT C. SMITH seems absent of any personal knowledge or experience of anything written on the alleged EFT instruments because he did not see the alleged originals at the time they were allegedly tendered to the bank.

(d) Defendant in error objects to KENT C. SMITH's statement and declares it as hearsay as KENT C. SMITH has no personal first-hand knowledge, experience or awareness of the status or length of time or quality of Mr. Iverson's relationship with Big Horn Federal Savings Bank.

KENT C. SMITH has no personal knowledge or experience of how any alleged EFT instruments appeared to bank employees or Defendant in error's customer status with the bank or why the alleged EFT instruments were processed, or how the alleged EFT instruments were lawfully processed or even if the alleged EFT instruments were processed. The bank employees did not follow specific written instructions on the alleged EFT instruments and then allegedly proceeded to process them in direct violation to the alleged written instructions. The bank employees accepted the alleged EFT instruments and wrongfully processed them as "checks" in spite of the fact that the words "EFT ONLY" were allegedly written in red ink on the front and back of the alleged EFT instruments and the words "NOT FOR DEPOSIT" were written on the back of the alleged instruments. The alleged items were allegedly clearly marked and subsequently processed incorrectly by bank employees or officers, therefore it is the bank and its specific employees who mishandled the alleged EFT instruments who's actions were and are in violation of banking law. The words "WITHOUT RE COURSE" were allegedly written on the back of the alleged EFT instruments and with the receipt of the alleged EFT instruments and the alleged attempt of processing these instruments the bank fully accepted any and all liability that might come with the alleged EFT instruments and the employees of the bank accepted and attempted to process the alleged items under the understanding that the bank was accepting full liability for the alleged items and that there would be no recourse against the Defendant in error for any violations that may or may not arise from their improperly processing the alleged EFT items whether they were processed correctly or not. Black's Law Dictionary Fifth Edition page 1437 defines *without recourse* as a notification that if payment is refused by the parties primarily liable recourse cannot be had to him. See U.C.C. 3-414.(1). KENT C. SMITH has no personal

knowledge or experience as to any alleged mortgage release or alleged deed of trust that were allegedly signed or mailed to Defendant in error. KENT C. SMITH has no personal knowledge or experience as to any vehicle loan lien being cleared or the vehicle title being released.

(e) KENT C. SMITH has no personal knowledge or experience as to the alleged EFT items being returned or the bank being notified that the alleged EFT instruments were invalid or that the Defendant in error has or had an account at First Interstate Bank or that the alleged account was open or closed. KENT C. SMITH has no personal knowledge or experience as to any phone call or attempted phone call allegedly made by Vice President Sanders or the completion of any phone call to the Defendant in error. KENT C. SMITH has no personal knowledge or experience as to anything discussed on any alleged phone call between Mr. Sanders and the Defendant in error. Anything stated "According to Sanders" is mere hypothecated hearsay and is not in the personal knowledge or recollection of KENT C. SMITH.

(f) KENT C. SMITH has no personal knowledge or experience as to any attempted communication from the bank with the Defendant or about clearing up the situation or any alleged mistake. KENT C. SMITH has no personal knowledge or experience as to the Defendant in error taking any action about the bank's alleged letters and statements or even if there were any existing letters or statements from the bank or of anything stated by the Defendant in error to the bank.

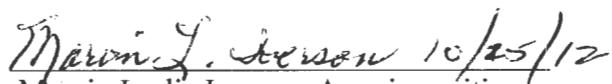
(g) KENT C. SMITH has no personal knowledge or experience as to information or bank statements of First Interstate Bank or any account allegedly opened or held by the Defendant in error. KENT C. SMITH has no personal knowledge or experience as to any instruments written or dates of activity on said account or even if the account remains open or closed.

(h) The definition of sovereign is the ability to decide for oneself one who makes the laws. Since the people of this country are the ones who make the laws then that makes we the people of this country sovereign. To single out and prosecute some of the people of this country who follow the law is an egregious malicious misapplication of justice. This Defendant acted lawfully there is no alleged scheme as was stated and no scheme was followed here. These lawful actions allegedly taken by the Defendant are taken accordingly within the law and are fully lawful and competent. A closed account according to Black's Law Dictionary Fifth Edition is defined as "*An account to which no further additions can be made on either side, but which remains still open for adjustment and set-off, which distinguishes it from an account stated.*"

(i) Based on defects underlying this affidavit there is no evidence that has been brought before the court to establish any substantive probable cause, fact, testimony to evidence that the Defendant in error possessed any intent to execute or carry out any alleged artifice, scheme or device to defraud. The Defendant in error has not been shown with any fact acceptable to law to be in violation of any Title 18 code in any way.

Maliciously labeling Defendant in error as a *Sovereign Citizen* violates my God given right to self-determine and think according to my own conscience.

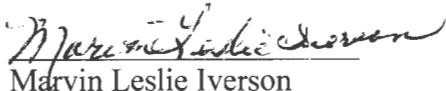
Respectfully submitted,
All Rights Reserved None Waived


Marvin L. Iverson 10/25/12
Marvin Leslie Iverson, American citizen
c/o 483 Lane 40.
Burlington, Wyoming near [82411]

Certificate of Service

I certify that a true and correct copy of the foregoing Rebuttal to Affidavit of KENT C. SMITH filed 09/25/12 is executed and delivered in lawful manner to District Court of Wyoming, this _____ day of October, 2012.

All Rights Reserved,


Marvin Leslie Iverson

